CURRENT LEGISLATION.

D. H. VAN DOREN, *Editor-in-Charge.*

STATE INSURANCE UNDER WORKMEN'S COMPENSATION ACTS.—The business of insurance has long been the subject of governmental regulation and control, and a state department, superintendent, or commissioner, with power to compel adherence to laws governing reserves, investments and expenditures of mutual and stock companies, is found in practically every American jurisdiction.[1] The purpose of this legislation has been regulatory only, and the undertaking of life, fire, and most branches of commercial insurance has been left, save in a few sporadic instances, to private enterprise.[2] In the growing field of social insurance, however, there is a marked tendency among governments themselves to engage actively in the business;[3]

[1]Richards on Insurance Law (3d edition), § 6.

[2]Wisconsin alone in the United States grants life insurance and annuities from a state "life fund", which is, however, without liability to the state beyond the amount of the fund. Wis. Stat. 1915, § 1989 *m*, being Laws 1911, c. 577; 1911, c. 664, s. 127; 1913, c. 291. State-managed funds for the insurance of public buildings are found in several states. See, *e. g.*, Marr's Ann. Rev. Stat. La. 1915, §§ 6796-6799; Purdon's Dig. Stat. Law Pa. 1916, vol. 6, pp. 7165-7166; Code Laws So. Car. 1912, vol. I, §§ 125-137, as amended by So. Car. Laws 1916, no. 374. A state bonding department, to bond counties, cities, etc., against loss or default by any officer, is authorized in North Dakota. No. Dak. Laws 1913, c. 194. Italy established a state monopoly of life insurance in 1913; New Zealand has had state life insurance since 1869, and state fire insurance since 1903, in free competition with private corporations. See The Legislation of the Empire 1898-1907 (London 1909), vol. II, pp. 229, 261; article on The Case against State Insurance by W. H. Hotchkiss, in The Outlook, vol. 103, pp. 487-490 (March 1, 1913).

[3]The most elaborate piece of social legislation of its kind is the German Workmen's Insurance Code, a codification of earlier acts, which provides for sickness, accident, invalidity and survivors' insurance, administered through mutual trade associations, insurance institutions, etc., by the Imperial Insurance Office. Reichsversichersordnung. (Number 3921). Vom 19. Juli 1911. Reichsgesetzblatt, Aug. 1, 1911, pp. 509ff. Elaborate Workmen's Accident and Sickness Insurance Codes were passed in Russia in 1912. See Bulletin of the International Labour Office, vol. VIII, nos. 3, 4, pp. 129, 148; no. 8, pp. 346-358 (1913). Rumania has sickness, accident, old age and invalidity insurance administered by the state, and operating in part through state-managed trade guilds. Monitorul Oficial, No. 236 din Ianuarie 1912. The comprehensive workmen's insurance acts of Austria have been further extended by recent legislation. Reichsgesetzblatt 1913, XI. Stück, S. 41, 45; Soziale Rundschau 1913, II, 55, 62. England in 1911 adopted national health and unemployment insurance. 1 & 2 Geo. V, c. 55. In Norway, insurance against sickness in a state fund is compulsory on all employees over 15 years of age whose employment is for not less than six days. Norsk Lovtidende, 1909, 559, amended by Norsk Lovtidende, No. 15, S. 134 (1911). The Swiss Confederation undertakes to insure persons in military service from the consequence of accidents and sickness. Scweizerisches Bundesblatt 1915, I, 45. Maternity allowances, as in Norway and some other countries, are made by the Australian Commonwealth. See Bulletin of Inter. Lab. Off., vol. VIII, nos. 9, 10, pp. 393-394 (1913). Among many signs of awakening interest in social insurance in the United States is the appointing of legislative commissions to investigate the matter in some states. See, *e. g.*, Deering's Gen. Laws Cal. 1915, Act 1672j; Mass. Acts and Resolves 1916, ch. 157 of Resolves.

and in this country such activity has been particularly noticeable under workmen's compensation statutes.[4]

That some form of compulsory insurance of awards is essential to the efficient administration of a workmen's compensation system is generally conceded, even by officials in states which have not thus far adopted the policy;[5] but over the question of who shall be the carriers of this insurance, the strife has been long and bitter. On behalf of the private companies, who naturally do not want a State monopoly of a large and important branch of their business, it is urged that the participation of the government in insurance means inevitably a decrease in efficiency, a mingling of politics with business, that is dangerous to the insured and to the public which is ultimately responsible.[6] The advocates of state insurance, on the other hand, point to the paramount interest of the community in the subject matter, the elimination of the element of private profit which state insurance would accomplish, and the encouragement offered to accident prevention, as reasons why the public should take a hand, at least in competition with the stock companies.[7]

Without attempting to pass on the merits of the controversy, we will briefly review the provisions in American compensation statutes on the subject. Only four states have monopolistic state-managed insurance—Nevada, Oregon, Washington and Wyoming. The two former provide for accident funds maintained wholly by assessments, upon employees only in Nevada,[8] and upon both employers and employees in Oregon.[9] The expenses of administration of the Washington and Wyoming Funds, on the other hand, are paid out of the state treasuries.[10] All four commonwealths leave the conduct of this vast enterprise in the hands of a state department, variously denominated Industrial Commission, Industrial Accident Commission, Industrial Insurance Department, and State Treasurer.

---

[4]Of the 32 states and 3 territories having workmen's compensation acts, the following have state-managed insurance in some form: California, Colorado, Maryland, Michigan, Montana, Nevada, New York, Ohio, Oregon, Pennsylvania, Porto Rico, Washington, West Virginia, Wyoming. In Kentucky, Massachusetts and Texas, there are "Employees' Associations" of a mutual type organized by the state. See Digest of Workmen's Compensation Laws in the United States and Territories, pub. by Workmen's Compensation Publicity Bureau (New York, 1915; and Supplement 1916).

[5]See, *e. g.*, Report of the Employers' Liability Commission of New Jersey for the year 1915, pp. 32-40; also Boyd, Workmen's Compensation, § 52.

[6]See article in The Outlook (foot-note 2, *supra*); Bradbury, Workmen's Compensation (2d ed.), p. 960; State Insurance and Workmen's Compensation, by W. E. Gray, in The Economic World, New Series, vol. XI, pp. 249-252, 282-285 (Feb. 1916).

[7]Gephart, Insurance and the State, pp. 202-206; The Experience in State Compensation Insurance in California, by Ira B. Cross, in The Survey, vol. XXXIV, pp. 173-174 (May, 1915).

[8]Nev. Laws 1913, c. 111, § 21.

[9]Ore. Laws 1913, c. 112, § 19. The contributions to the Fund by employees are set at only five tenths of one per cent. of monthly earnings, with a minimum of twenty-five cents.

[10]Remington and Ballinger's Ann. Codes Wash. (Supplement, 1913), §§ 6604-4, 6604-29; Wyo. Sess. Laws 1915, c. 124, §§ 15-16.

Premium rates in Washington are proportionate to the hazard of the employment, varying from ten per cent. in the case of employees in powder works to one and one-half per cent. for theater stage employees; and the industries to which the act applies (forty-seven in number) are listed, with the proviso that payment accounts are to be kept separately with each industry, so that no one class of employments shall be liable for the depletion of the accident fund from accidents happening in any other class.[11] This has justly been criticized as imperilling the solvency of the various class funds, particularly the smaller ones;[12] and it is significant that in none of the other three jurisdictions where monopolistic state insurance is in operation, has a similar method of splitting up the fund been adopted.[13] Wyoming, however, is guilty of an equally flagrant actuarial fallacy in fixing the rate of assessment on employers at two per cent. of the monthly pay-roll, regardless of hazard;[14] a system which works a manifest hardship not only on the employer whose business involves no great dangers, who is taxed out of proportion to his normal risk, but also on the humane employer who installs safety devices, since he is not reimbursed for his expenditures in the form of reduced premiums. In Oregon the rate of assessment on each class of employment is fixed by the Act;[15] but the classification is arbitrary and inelastic. Nevada alone of all the state insurance jurisdictions has adopted the plan whose advantages are so obvious that it would seem that no child could miss them; that is, initial rates of premiums fixed by the Act, but with power in the Nevada Industrial Commission, which is charged with the administration of the law, to change classifications and rates as experience may demand.[16]

Semi-monopolistic state insurance, scarcely less obnoxious to the private companies than the laws we have discussed, is in force in Ohio and West Virginia. In the former jurisdiction, the employer who does not pay premiums into the state fund remains liable as at common law to an action for damages brought by the injured employee, but is deprived of the defenses of fellow-servant's fault, contributory negligence, and assumption of risk;[17] while, in West Virginia, only insurance in the state fund will relieve an employer from his common-law liability, and the only concession to the private companies is

---

[11] § 6604-4 (foot-note 10, *supra*).

[12] See "The True Situation in Washington with Regard to the State Managed Workmen's Compensation Fund", an address by G. H. Driggers before Committees on Labor and Capital of Montana State Legislature, Feb. 6, 1913.

[13] See foot-notes 8, 9, 10.

[14] Wyo. Laws 1915, c. 124, § 16.

[15] Ore. Laws 1913, c. 112, § 19.

[16] Nev. Laws 1913, c. 111, §§ 21-22. The Washington act, however, (§ 6604-4) permits "annual readjustments" of rates.

[17] Page & Adams Ann. Ohio Gen. Code 1912, §§ 1465-54 to 1465-61, as amended by Ohio Laws 1913, S. B. 137, s. 12, S. B. 296, and Ohio Laws 1914, S. B. 28. Even payment of premiums to the state fund does not protect the employer from an action at law where the injury results from the wilful act of the employer or his agents, or from failure to comply with safety requirements, in which cases the employee may at his option claim compensation under the act or sue, the defenses of contributory negligence and fellow-servant rule being available to the employer.

that the public service commission may in its discretion insure the risks of the workmen's compensation fund in them.[18]

Seven States have state-managed insurance in competition with private companies.[19] Perhaps the fairest in this respect is California, which empowers the Insurance Commissioner to issue a uniform classification of risks and premium rates, which must be adhered to by all compensation insurance carriers, including the State Fund; the rival underwriters have therefore been given an even start, and the State Fund appears to have prospered.[20] Mutual insurance associations have been encouraged, notably in California, Colorado, Pennsylvania, and New York, where the compensation acts contain special provisions for their organization.

Whether the business of insurance is destined to undergo a process of socialization, and come forth a tool of the state rather than a subject of private enterprise, is a question at present impossible of solution. However, with the impressive growth of social insurance in mind, it seems not improbable, at least in a field so impregnated with the public interest as that of workmen's compensation, that the next few years will see monopolistic state-managed insurance, now a mere experiment in a few Western states, established as the prevailing system.

RIGHT OF A CORPORATION TO PRACTICE LAW.—With the increasing popularity of the corporate form, trust companies and other corporations, organized for the practice of law, made their appearance. Their entry into the legal field, however, has been looked upon with such constant disfavor by the American Bar Association[1] that it is not surprising to find that six states now have statutes limiting or denying the right of incorporation for this purpose.[2]

---

[18]Hogg's West. Va. Code 1914, §§ 675-680, 710.

[19]Cal. Laws 1913, c. 176, as amended by Laws 1915, c. 541, 607, 662; Colo. Laws 1915, c. 179, 180, 181; Md. Laws 1914, c. 800, as amended by laws 1916, c. 86, 368, 379, 597; Mich. Pub. Acts 1912, No. 10, amended by Pub. Acts 1913, Nos. 50, 79, 156, 259, and Pub. Acts 1915, Nos. 104, 153, 170-1, and supplemented by Pub. Acts 1915, Nos. 136, 177, 182; Mont. Laws 1915, c. 96; N. Y. Consol. Laws, c. 67, as amended by Laws 1914, c. 316, Laws 1915, c. 167-168, 615, 674, Laws 1916, c. 622; Pa. Laws 1915, No. 338, supplemented by Nos. 339-343.

[20]See article in The Survey (foot-note 7, *supra*).

[1]80 Cent. L. J. 406-408.

[2]Page & Adams Ann. Ohio Gen. Code (1910), § 8623 (forbids incorporation for carrying on professional business. See State *v.* Laylin (1905) 73 Oh. St. 90, 76 N. E. 567); Laws Md. 1916, c. 695, p. 1618; Gen. Acts. Mass. 1916, c. 292, p. 235; Laws Mo. 1915, p. 100; Birdseye's Consol. Laws N. Y. 1910, Bus. Corp. Law, § 2a, p. 509, and N. Y. Laws 1916, Penal Law § 280, p. 448 (for the interpretation of these statutes see *In re* Associated Lawyers' Co. (1909) 134 App. Div. 350, 119 N. Y. Supp. 77, and cases cited under footnotes 11 and 12, *infra*); Remington & Ballinger's Ann. Codes and Stat. Wash., Supp. 1913, § 3349 subd. 13, p. 272 (applies particularly to trust companies and provides that such companies or other corporations whose officers or agents shall solicit legal business shall be disqualified from serving in any fiduciary capacity). A bill to prohibit corporations from practicing law was introduced in Illinois at the 49th Assembly but failed to pass. See Legislative Digest of 49th General Assembly, State of Illinois, H. B. 258, p. 187.